

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1237

NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION—ABANDONMENT
EXEMPTION—BETWEEN LITTLETON, N.H., AND BETHLEHEM, N.H.

Decided: December 3, 2015

On October 15, 2015, the New Hampshire Department of Transportation (NH DOT) filed a verified notice of exemption under 49 C.F.R. § 1152.50 to abandon 6.86 miles of rail line located between Station 995+66 (at Industrial Drive in Littleton, N.H.) and Station 1359+77 (3.35 miles east of the Littleton, N.H./Bethlehem, N.H. town line) (the Line). Because this transaction requires further scrutiny, the notice will be rejected. As discussed further below, NH DOT may file a new notice of exemption in this docket, consistent with this decision, to re-initiate the abandonment process, should it choose to do so.¹

BACKGROUND

On April 16, 1999, the Board served and published a notice of exemption under 49 C.F.R. § 1150.31 to authorize NH DOT to purchase from the New Hampshire and Vermont Railroad Company (NHVT) the Line and other segments of rail, constituting approximately 36.0 miles of rail line in New Hampshire. N.H. Dep't of Transp.—Acquis. Exemption—N.H. & Vt. R.R., FD 33728 (STB served Apr. 16, 1999). Different carriers have been authorized to operate over the line since that time.²

¹ If NH DOT re-submits a verified notice of exemption to abandon, it should clarify its description of the Line by, for example, including mileposts.

² Simultaneously with the subject acquisition exemption, the Board served and published an exemption authorizing NHVT to operate over the rail line purchased by NH DOT. N.H. & Vt. R.R.—Operation Exemption—Certain Lines of N.H., FD 33727 (STB served Apr. 16, 1999). On September 10, 2001, the Board authorized New Hampshire Central Railroad, Inc. (NHCR) to replace NHVT as operator over the rail lines acquired by NH DOT in 1999. N.H. Cent. R.R.—Operation Exemption—Certain Lines of N.H., FD 34084 (STB served Sept. 10, 2001). The Board subsequently authorized NHCR to discontinue service over the Line at issue in this proceeding in a decision served on May 29, 2015. N.H. Cent. R.R.—Discontinuance of Serv. Exemption—Between Littleton & Bethlehem, N.H., AB 1234 (STB served May 29, 2015).

DISCUSSION AND CONCLUSIONS

NH DOT's verified notice of exemption requires additional certifications and information in order to comply with the requirements of 49 C.F.R. § 1152.50 and, therefore, will be rejected.

First, based on its verified notice, it appears that NH DOT may not have notified the requisite agencies of its verified notice of exemption in writing at least 10 days prior to filing with the Board, as required under 49 C.F.R. § 1152.50(d)(1). The agencies to be served under this Board regulation include: (1) the Public Service Commission (or equivalent agency) in the state(s) where the line will be abandoned or the service or trackage rights discontinued; (2) the Department of Defense (Military Traffic Management Command, Transportation Engineering Agency, Railroads for National Defense Program); (3) the National Park Service, Recreation Resources Assistance Division; and (4) the U.S. Department of Agriculture, Chief of the Forest Service. Although NH DOT states in its notice that "[s]tate agencies with interests in this proceeding (NHDOT, New Hampshire Department of Resources and Economic Development and others) are already aware of and involved in this proceeding," NH DOT has not provided a list of the specific agencies notified pursuant to 49 C.F.R. § 1152.50(d)(1) or shown that it provided the necessary information to those agencies.

Additionally, NH DOT's verified notice of exemption does not include the certification required under 49 C.F.R. § 1152.50(b), confirming that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. Moreover, NH DOT contends that it is not a common carrier by railroad subject to 49 U.S.C. Subtitle IV, Chapter 105, despite its purchase of the Line and other segments of rail line in 1999. See N.H. Dep't of Transp.—Acquis. Exemption—N.H. & Vt. R.R., FD 33728 (STB served Apr. 16, 1999). If NH DOT resubmits its verified notice of exemption to abandon, it should include the certification required under 49 C.F.R. § 1152.50(b) and provide justification for why it believes it is not subject to 49 U.S.C. Subtitle IV, Chapter 105.

With respect to NH DOT's Environmental and Historic Report, NH DOT has failed to certify under 49 C.F.R. § 1105.11 that it sent copies of its Environmental and Historic Report to certain agencies and/or State Historic Preservation Officer(s) in accordance with 49 C.F.R. § 1105.7 and certify to the Board that it has done so.³ The requisite agencies to be notified include: (1) the State Clearinghouse of each state involved (or other State equivalent agency if

³ NH DOT's Environmental and Historic Report references an Exhibit 1 not included in the filing submitted to the Board. NH DOT's verified notice also is unclear as to whether the newspaper notice found in Appendix C was published. See 49 C.F.R. § 1105.12.

the State has no clearinghouse); (2) the State Environmental Protection Agency of each State involved; (3) the State Coastal Zone Management Agency for any state where the proposed activity would involve land or water uses within that State's coastal zone; (4) the head of each county (or comparable political entity including any Indian reservation) through which the line goes; (5) the appropriate regional offices of the Environmental Protection Agency; (6) the U.S. Fish and Wildlife Service; (7) the U.S. Army Corps of Engineers; (8) the National Park Service; (9) the U.S. Soil Conservation Service; (10) the National Geodetic Survey; and (11) any other agencies that have been consulted in preparing the report.

Finally, any person who represents persons before the Board must be either (1) an attorney, see 49 C.F.R. § 1103.2 or (2) a registered non-attorney practitioner who has successfully completed the practitioner's examination, see 49 C.F.R. § 1103.3. Alternatively, because a corporation cannot represent itself per se, an officer or director, if properly authorized by the corporation, may represent a corporation in Board proceedings. See, e.g., Codorus Creek Ry.—Feeder Line Application—Stewartstown R.R., FD 35071 (STB served Apr. 13, 2010). Here, Jack E. Dodd filed the verified notice of exemption on behalf of NH DOT and has not shown that he is either an attorney or a licensed practitioner, or that he is an officer or director of NH DOT. Accordingly, it is not clear whether Dodd can represent NH DOT in this proceeding.⁴

For these reasons, NH DOT's notice of exemption will be rejected. NH DOT may submit a new verified notice of exemption to reinstitute the abandonment process.

It is ordered:

1. The notice of exemption is rejected.
2. The decision is effective on the date of service.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

⁴ Although on May 29, 2015, the Board served and published a notice of exemption for New Hampshire Central Railroad, Inc., filed by Jack E. Dodd, that does not provide evidence that Mr. Dodd is authorized under Board regulations to file on behalf of NH DOT.